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6 IN THE DISTRICT COURT OF GUAM
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8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 SONG JA CHA and IN HAN CHA,

12 Defendants.
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) CRIMINAL CASE NO. 08-00008-001 & -002
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11 **ORDER**

) re Government's Motion to Require the
) Defendants to Supply Handwriting Exemplars
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14 The United States filed a motion requesting the court to order the Defendants¹ to submit
15 to exemplar testing and to furnish exemplars of their handwriting to agents of the Federal
16 Bureau of Investigation ("FBI"). See Docket No. 52. Mrs. Cha opposed the motion on the basis
17 that the United States' failed to state the grounds on which the motion was based. See Docket
18 No. 62. Mrs. Cha asserted that the motion was without justification because the United States
19 failed to identify the handwriting with which the exemplars would be compared, nor did it
20 explain the exemplars' relevance. Id. Mr. Cha thereafter joined in Mrs. Cha's response to the
21 motion. See Docket No. 65.

22 Subsequently, the United States filed a response to the objections. See Docket No. 64.
23 Therein, the United States stated that the exemplars to be provided by the Defendants would be
24 used for comparison purposes with handwriting which appears on items the Government
25 provided to the Defendants as part of discovery. These items include business records,
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28 ¹ The Defendants are husband and wife. They will collectively be referred to as the
"Defendants," but individually as either Mr. Cha or Mrs. Cha.

1 notebooks, ledgers, checks, etc., which the United States asserts is relevant to prove the essential
2 elements of the offenses charged.

3 The court finds that the Defendants' handwriting exemplars are potentially relevant,
4 based on the United States' proffer. The court also recognizes that the Defendants have no
5 Fourth or Fifth Amendment interest which would prohibit forced disclosure of their handwriting
6 exemplars. See United States v. Mara, 410 U.S. 19, 21 (1973) ("Handwriting, like speech, is
7 repeatedly shown to the public, and there is no more expectation of privacy in the physical
8 characteristics of a person's script that there is in the tone of his voice."); United States v.
9 Dionisio, 410 U.S. 1, 5-7 (1976) (holding that voice and handwriting exemplars are identifying
10 physical characteristics outside the protection of the Fifth Amendment).

11 The court is unaware of how the United States obtained the business records, notebooks,
12 ledgers, etc. with which it will compare the Defendants' handwriting exemplars. Presumably
13 these items were obtained during the execution of the search warrant issued in this case. In light
14 of this court's recent Report and Recommendation that recommended suppression of all
15 evidence obtained during the search warrant execution,² the court hereby orders as follows:

- 16 • If the United States has evidence which it obtained independent of the search warrant
17 against which it will compare the Defendants' handwriting exemplars, then the
18 Defendants are ordered to submit to exemplar testing and furnish exemplars of their
19 handwriting to agents of the FBI. The parties are directed to meet and confer as to a
20 mutually agreeable time and date when this can occur.

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28 ² This Report and Recommendation is still under review by the Chief Judge.

- 1 • If, however, the only evidence which the United States has for comparison purposes
2 was obtained as a direct result of the search of the Blue House Lounge and the
3 Defendants' home pursuant to the search warrant, then the court denies the United
4 States' motion to compel the Defendants to provide handwriting exemplars. This
5 ruling notwithstanding, if the Chief Judge ultimately denies the motions to suppress,
6 then the Defendants are ordered to submit to exemplar testing and furnish exemplars
7 of their handwriting to agents of the FBI.

8 IT IS SO ORDERED.



/s/ Joaquin V.E. Manibusan, Jr.
U.S. Magistrate Judge
Dated: Feb 23, 2009